

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**LEAR RENOSOL SELMA  
MANUFACTURING FACILITY**

**and**

**Case 15-CA-140072**

**INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA**

**ORDER<sup>1</sup>**

The Employer's petition to revoke subpoena duces tecum B-1-KFU8N5 and subpoenas ad testificandum A-1-KGCOJP, A-1-KGDB47, A-1-KGDH05, A-1-KGDVG5, A-1-KGEB05, A-1-KGEOUH, and A-1-KGD9T9 is denied. The subpoenas seek information relevant to the matters under investigation and describe with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoenas. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

We reject the Employer's argument that the subpoenas must be revoked, or a protective order entered, because the Region's investigation is in violation of the Memorandum of Understanding Between OSHA and NLRB, 40 FR 26083 (June 20, 1975) (the MOU). The MOU states in relevant part that "[w]here a charge involving issues covered by Section 11(c) of the OSH Act has been filed with the General Counsel and a complaint has also been filed with OSHA as to the same factual matters,

---

<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

the General Counsel will, absent withdrawal of the matter, defer or dismiss the charge." However, and contrary to the dissent, we find that the MOU does not require the Region to determine whether to defer or dismiss such charges, or engage in consultations with the Solicitor of Labor concerning deferral or dismissal, without having investigated the facts and circumstances surrounding the allegations.

Dated, Washington, D.C., December 2, 2015.

KENT Y. HIROZAWA,	MEMBER
LAUREN McFERRAN,	MEMBER

Member Miscimarra, dissenting:

I would grant the petition to revoke in this case. The MOU identifies certain procedures to be followed, depending on the circumstances, in cases where a charge filed with the Board involves issues that are also covered by Sec. 11(c) of the OSH Act. Although the MOU does not explicitly indicate when compliance with these procedures is to occur, in light of its stated goal of "obviate[ing] duplicate litigation," I believe the MOU requires the General Counsel to comply with these procedures before the Region conducts any investigation.

Here, the second amended charge includes both allegations that raise issues covered by Sec. 11(c) of the OSH Act, as well as allegations that involve issues solely related to the NLRA. In my view, the relevant MOU paragraph is B-4, which states that "[w]here a charge has been filed with the General Counsel which includes both issues covered by Section 11(c) of the OSH Act and matters within the exclusive jurisdiction of the General Counsel, the General Counsel and the Office of the Solicitor of Labor will consult in order to determine the appropriate handling of the matter." In this case, there

is no evidence that such a consultation has taken place. Accordingly, I would grant the petition to revoke in its entirety. Given the General Counsel's assertion here that "the totality of the circumstances must be considered" to determine the merits of the allegations that arise solely under the NLRA, I would not attempt to sort out which aspects of the subpoenas seek evidence related to issues covered by Sec. 11(c) of the OSH Act, and which seek evidence limited to matters within the exclusive jurisdiction of the General Counsel. However, I would grant the petition to revoke without prejudice to the Region's reissuance of one or more of the subpoena(s) following the consultation prescribed in the MOU.

Dated, Washington, D.C., December 2, 2015.

PHILIP A. MISCIMARRA,                      MEMBER